

Remarks

It is observed that the Examiner still rejected some of the claims as being anticipated by Garneau (US-6,553,573), and others as being obvious over Garneau.

In particular, the Examiner argues that the padding is elastic and that the whole assembly is also elastic.

The applicant does not deny that the padding of Garneau, made of polyurethane foam may have a certain intrinsic elasticity (however depending on the type of polyurethane that is used), but, as already discussed in the applicant's previous letter, the coupling of an elastic layer (the padding) with top and bottom layers that are surely not elastic in the true meaning of the word provides an assembly that cannot be elastic.

The applicant does not understand why the Examiner does not recognize that the Garneau structure is not the same as the applicant's claimed one, taking also into account that the applicant clearly identified as his aim just that of providing an assembly that is entirely made of double-stretch material, putting in evidence all the limitations and drawbacks of the prior art protective elements for cycling shorts.

It seems that the Examiner considers the word "flexible" that is used in Garneau just as the word "elastic": this would not be correct.

In addition, it should be remembered that the wording "flexible" was added after the filing of the provisional application: in any case, flexible does not mean elastic.

Thus, it seems that the Examiner is going well beyond the teaching of the provisional application of Garneau (since that is the only application that can be considered as prior art of the applicant's invention) when the Examiner argues that the polyester layers are elastic since there is no teaching in Garneau that the resulting assembly is not elastic.

The fact that Garneau does not mention the elasticity (or not) of his assembly is just because that is not the issue with the Garneau patent (and provisional application).

Instead, the assembly of Garneau falls within the prior art protective elements dealt with in the introductory portion of the applicant's specification, with all the related drawbacks.

In fact, Garneau discloses a protective element in a pair of cycling shorts wherein the protective element comprises:

- a thick intermediate layer made from resiliently compressible material;
- a thin top layer made from a non-compressible material;
- a thin bottom layer made from a non-compressible material.

The intermediate layer may consist of open cell foam, preferably polyurethane, while the top and bottom layers are made of synthetic material, preferably polyester.

This means that the pad and the shorts are not made of the same material, as discussed in the applicant's previous letter.

This feature (i.e. the fact that the support and the padding are made of the same material) has been introduced in currently amended claim 1 wherein it is recited that "....said support and said padding being made of a double-stretch material having the same characteristics as regards elongation along multiple planes."

Full support for such feature can be found throughout the specification.

In view of the above, reconsideration of the pending claims is respectfully requested by the applicant.

The applicant is so convinced of the correctness of his arguments and of the patentability of all the pending claims (as well as that the Examiner is not correctly considering the patent in the name of Garneau) that in case the Examiner still rejects the pending claims a Notice of Appeal will be filed for the present application.

Should instead the Examiner believe that the application is still not in an allowable condition only because of minor deficiencies, an informal phone conversation with the Examiner or an Examiner's Amendment are kindly requested by the Applicant.

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Respectfully submitted,



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